



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

## OATHS IN LEGAL PROCEEDINGS.

---

EVENTS of importance which have recently occurred in the United States, in France, and in England, are drawing public attention to the subject of oaths, and are causing the inquiry to be made, Of what conceivable use are they, especially in legal proceedings, in this age of enlightenment? Not long since, in New York, a man was imprisoned because, having some scruples (which the court held did not fall within the general provisions of the law upon the subject) as to the prescribed form of the oath, he refused to be sworn as a witness. In England the case of Bradlaugh has led the majority of Parliament to exhibit feelings so conservative and narrow-minded as to cause elsewhere emotions of profound surprise. In France, on the other hand, the ministry but a short time since introduced a wise and liberal measure in reference to the taking of oaths.

The only practical use of an oath is to increase the moral responsibility of the person to whom it is administered. It has, however, during many ages been employed for other purposes. In later times it has been used as a means for harassing and persecuting those not of the same religious faith as the law-makers themselves. Oaths were prescribed which none could conscientiously take unless they believed exactly as the legislators did. If they could not so conform their belief, they were excluded from all offices and emoluments and from testifying in courts of law, which, however, proved a greater injury to others than to themselves. As laws have until a very late period existed in America as well as in England, oaths have been required which might easily be taken by the infamous Lord Jeffreys and by the more infamous Benedict Arnold, but which could not be subscribed by men of such pure lives and exalted piety as Richard Baxter and Jonathan Edwards. Had the philosophers Confucius or Plato or Pascal lived in and been natives of England

or some portions of America at a recent date, they would have found themselves little better than outcasts from their inability to take certain oaths according to the established form. At the same time a ward politician, who cared no more for the sanctity of an oath than for a puff of tobacco-smoke, would have been permitted to swear as rapidly as an officer could administer the oath. How powerful an influence would the ceremony exert upon the conscience of such a man? Conscientious men are frequently restrained from swearing at all. Those who are conscientious will tell the truth under all circumstances. The remainder of the human family do not place much importance upon the sacredness of any form. The absurdity of some of these requirements is illustrated by our famous "iron-clad" oath. Every loyal man who shed his blood in defense of his country has been compelled to take this oath when inducted into any office. He could of course take it readily enough. But what good did it accomplish? For the man, however, who had participated in treasonable practices or borne arms against the lawful government, a different and far milder oath was provided, for he could not take the one termed "iron-clad" without committing perjury. Where is the reason or sense in such proceedings, especially in a country where freedom of conscience is guaranteed to all?

Some men appear to believe that the Supreme Being regards outward forms more than real virtue, and that he will punish a person who tells a falsehood in one way with far greater severity than he will one who tells it in another. According to their view of the case, a man under oath, making a statement which is false, but otherwise harmless, would be caused to suffer more acute agony in the future world than one would be who, not under oath, told a willful and malicious lie, which (as he intended it should) caused an irreparable injury. Are we not to suppose that it is the falsehood itself, and the intent to deceive, which are considered by the Supreme Being? Or does he regard the particular forms under which it is told?

"It is laid down by legal authorities," writes Lord Hardwicke, "that what is universally understood by an oath, is that the person who takes it imprecates the vengeance of God upon him if the oath he takes is false." Oaths are of very ancient origin. Devised by priestcraft to still further fetter the consciences of its victims, terrible denunciations were uttered against those

who made false ones, or who failed to do as they had sworn; and the dark clouds of that old superstition yet shadow the world, which teaches that prevarication, deception, and even willful lying are comparatively harmless, but that breaking an oath is truly terrible. The practice of administering oaths in judicial proceedings existed for many centuries before Christ. The priests of every clime and of every faith lent their arts and influence to render the ceremony as impressive as possible to the minds of the uneducated. For themselves, however, they reserved the privilege of dispensing with the obligation so incurred, when to fulfill it would prove a serious inconvenience. As the means of rendering promises more sacred and effectual, the Egyptians, Hindoos, Persians, and Hebrews, enforced the custom upon all grave occasions. The Greeks and Romans adopted a similar practice. From the latter nation was derived the form now in common use, of terminating the ceremony with the words "So help you God." History does not record that this universal practice has at any time resulted in good, nor is it shown that in any instances it has proved more beneficial to the human race than the simple Yea, yea, Nay, nay, prescribed by the Founder of the Christian religion.

The administration of oaths is required in America upon every trivial occasion. Any man elected to office, however unimportant it may be, is in every instance sworn to support the Constitution of the United States and to perform the duties of his office to the best of his ability, when in nine cases out of ten he does not know (and never takes the trouble to find out), what the Constitution contains, nor of what the duties of his office consist. Under these circumstances the sanctity of an oath cannot long be regarded by the people with any exalted degree of reverence or of dread.

Protests have at different periods been entered against the custom. The Friends and Moravians have refused on the one hand to take oaths, Freethinkers upon the other. One class of writers has treated the ceremony as absurd, the other as profane. The governments of America and England have ascertained that in the cause of justice it was necessary to modify to a certain extent the strict rules which had long been established as to the forms of oaths and the admission of testimony. Now, as I have already stated, the subject has assumed great prominence in England and France, as well as in America, by reason of cer-

tain judicial and parliamentary proceedings. The countries first mentioned still retain many ancient prejudices. In both of them a class exists which cannot comprehend the meaning of advancement and reform. They look back with regret toward the Dark Ages. In England, where, as Mr. Labouchère says, "the climax of unreason has been reached, when an oath is taken on a book which contains the words 'Swear not at all,'" the majority of the House of Commons objected to Mr. Bradlaugh being sworn as a member of Parliament, upon the ground that he could not take the required oath, and then, when he did take it, expelled him for having done so.

The French Government, which appears to be pursuing a safe and enlightened policy, has seen proper, on account of the increasing antipathy to oaths and of the great changes in religious belief, to introduce into the Chamber of Deputies a bill which will give to the scrupulous and the skeptical the right of merely affirming. This certainly is a step in the right direction. It was recently stated that in one case, in France, a witness argued with the court for more than an hour before he would consent to be sworn. Another witness insisted upon the removal of the crucifix from the hall of justice. In another French court the foreman of a jury was discharged because he refused to take the prescribed oath. In England, where the law-makers have, even in this age, seemed to regard a large class of liberal thinkers as beyond the pale of civilization, the spirit of advancement, to judge from late proceedings in the House of Lords, appears to be making slow but certain progress. In the consideration of such matters the condition of a man's conscience should have greater weight than that of his faith. England has never been more badly governed than when neither Catholics nor Dissenters, Jews nor Freethinkers, were permitted to sit in the Legislature, and when every member of Parliament could cheerfully subscribe to the Thirty-nine Articles of the church, and take every test-oath devised and in force during the two preceding centuries. These men, so eminently orthodox, did not, however, hesitate to plunder and betray their country. Even those who have most strenuously advocated the necessity of oaths have admitted that a high sense of honor was equivalent to a fear of future retribution. Thus, in England, noblemen who sat upon the trial of their peers were not sworn. They delivered their vote or verdict upon honor. In America, the certificate

upon honor of an officer of the army is treated with the same consideration as the affidavit of another person. In judicial proceedings likewise, if a witness is not governed by a sense of honor and of right, or by fear of punishment in this present world, how far in these days of independent thought will he be restrained by the dread of punishment in the vague hereafter? If he is a consistent Christian, an oath cannot further add to his determination to "tell the truth, the whole truth, and nothing but the truth." If a skeptic, he will either be guided by a sense of honor or by fear of immediate punishment. If a Christian in belief, but not in practice, he is presumed to stand in greater fear of the penalties of perjury in this world than of those in the next, for if the fear of future punishment (in which he must fully believe) does not influence him nor direct his actions in other earthly affairs, why should it as to fulfilling the obligations of an oath? The Bible says that a lying tongue is an abomination to the Lord. Can it be a greater abomination because certain forms have taken place before the lies are told?

Whatever peculiar views any class may entertain upon the subject, nothing more sacred than the presence of God can now be invoked in the cause of truth. In former times a different opinion prevailed. William the Norman, prior to his conquest of England, compelled Earl Harold, his shipwrecked guest, to take what was then regarded as a terrible oath, to support and assist the ambitious projects of the Norman duke. To render the oath more effective, William is said to have concealed under the altar upon which it was taken all the old bones ever appertaining to a saint which he was able to gather from the different parts of Europe. William, for his chicanery, was rewarded with the blessings of the Pope; while Harold, for his brave defense of the liberties of his country, received nothing better than anathemas.

The forms invented for binding a man's conscience are various and peculiar. Those most simple have been adopted in this country for general use. But, as Professor Dwight writes in an article on oaths in one of our cyclopedias, "Each witness is allowed to take the oath in the form which, according to his view, is the most binding upon his conscience." The Greeks and Romans swore upon the altars of their gods, a custom subsequently introduced, with other Pagan ceremonies, into the Roman Catholic Church. The Persian swears by the beard, the

Hindoo by kissing the finger or toe of a Brahmin, the Parsee by holding the tail of a cow, the Christian upon the Gospels, and the strict Catholic upon the Gospels with a cross. The Jew may be sworn upon the Pentateuch. In ancient times he placed his hand, when making oath, upon certain parts of a man's body. The Chinaman from one province swears by a burning scroll upon which have been written certain cabalistic words. Those from another province take the oath by kneeling and breaking a china saucer against the witness-stand; while those from a third portion of that empire insist that the only method by which their consciences can be bound is to have the ceremony administered upon the quivering body of a cock just decapitated and bisected. Yet, according to the authority above quoted, any of these ridiculous forms must be permitted in our halls of justice. As stated by the same writer, the oath in ancient times was regarded as an imprecation or an address to the Supreme Being, calling upon him to visit with his vengeance the person who should commit perjury; but more recently it is regarded in the nature of a warning or suggestion that God will fitly punish false swearing. As I have said, the forms for oaths now generally used in this country are exceedingly simple. They should also be regarded as very impressive. Yet of what avail are they? In the Territory of Wyoming, and in other portions of the United States, the person who, by false swearing, causes the conviction of another of a capital offense, is regarded by the law as being himself guilty of murder, and is accordingly compelled to suffer the penalty of death. Such a provision in the statute books will accomplish more toward checking false evidence than the exaction of all the oaths ever invented by the cunning of man.

Many of our leading jurists are strenuously opposed to the law which permits parties to suits to testify in their own behalf. They insist that such laws encourage false swearing, and that acts of perjury are rapidly increasing. If such is the case, it tends to prove that neither the fear of punishment in this world nor in the world to come will deter witnesses from perjuring themselves where they are interested. Mr. Junkin, a clergyman who has written very fully upon this subject, and who regards oaths as of divine origin, says, nevertheless: "Many deny that it is lawful in the sight of God to take an oath, while thousands who do not scruple to be sworn are ignorant or regardless of the

awful obligations they assume, and swear with rashness and frivolity, without a proper sense of the criminality of such conduct. So grievously is this ordinance prostituted, and so much is its form distorted in our courts of justice, that it fails to a lamentable degree to subserve the ends for which it was instituted."

It appears difficult at the present day to conceive the character of a person who, neither fearing the penal enactments of man against false witnesses, nor the denunciations of God against liars; a person who would not hesitate to rob his neighbor of all his possessions by means of false testimony, nor to send him to the penitentiary or the gallows by the same instrumentality; yet who, in opposition to his own interests, would be restrained from the commission of all these enormities solely by the sanctity of an oath and the fear of the additional punishment in the future world. He might reason with himself that man, unable to prove his guilt, would *not* punish him; but that an omniscient God certainly would. Could not God as readily perceive and punish the sin of making a false statement, by which an innocent man would be defrauded, imprisoned, or judicially murdered? If any man does exist with the character just described, he must closely resemble that robber mentioned by Irving, who had no scruples whatever about cutting the throats of several of his fellow-beings before breakfast for a small sum of gold; but was thrown into an agony of remorse when he learned that he had been eating a piece of meat upon a fast-day.

Notwithstanding the dignity of our courts of justice, the customary methods of tendering oaths are far from impressive, and to people possessed of great veneration are somewhat shocking. The person who administers them is not usually eminent for piety. To obtain the position of clerk, he must rather have evinced political shrewdness and profound sagacity. He is far better acquainted with the voters of the Ninety-ninth ward than with the Psalms of David or the Holy Gospels. He hardly seems to be the proper person to invoke the Supreme Being to aid a faltering witness, or to denounce the wrath of Heaven upon the one who gives false testimony. Upon the opening of a term of court, one of the first duties of the clerk is to swear the grand jury. Directing the one who has been selected as foreman to stand up, he hurries through with the prescribed form in a manner scarcely intelligible to those even who are familiar with it.



The rest of the grand jury are then sworn in squads and platoons, without having the oath repeated to them, and at the close the man of cleanliness and refinement is compelled to bow down and kiss the same ancient and greasy volume, which for years has been used for similar purposes, with his next neighbor whose mouth has never known a tooth-brush, whose lips are dripping with tobacco-juice, and whose breath is redolent of whisky and onions. Is it remarkable that some should prefer to be sworn with the uplifted hand? Then as each witness takes the stand, the Supreme Being is again called in by the clerk to assist in the judicial proceedings and to brace up the witness to do his duty. Jeremy Bentham, in 1817, wrote of oaths in his strange style: "On the supposition that, by man over the Almighty, power should to this, or any other purpose, be exercised or exercisable, an absurdity than which nothing can be greater, cannot be denied to be involved; man the legislator and judge, God the sheriff and executioner; man the despot, God his slave. . . . God is a negligent servant indeed, but still a servant; He disobeys the orders nine times out of ten, but he pays obedience to them on the tenth."

In many of the Western States witnesses are sworn *en masse*, to save time. While the ordinary business of the court is progressing the clerk finds it convenient to add to his own emoluments by increasing the number of American citizens. On such occasions another oath is employed, the termination of which at a little distance sounds very much like "s'port the Conshetushun United States, so help-yeh God — five dollars, sir." To an enlightened American of the present day, whether he is an orthodox Christian or an advanced Freethinker, the practice must appear not only useless and absurd, but reprehensible and pernicious.

Do oaths at this time assist courts of justice in arriving at the truth? Do they not rather, with all the cumbersome strictures connected with them, prevent the truth from being obtained in many instances? To exclude a man who is strictly moral, honest, and conscientious from testifying in a court of justice for the reason that his belief differs from that held by a majority of his neighbors, while every fawning hypocrite is permitted to do so, is an absurdity. The absurdity, however, existed in all the States of the Union until quite recently, and yet exists in many of them. This absurdity appears yet more

conspicuous when we consider the present views entertained by many on the subject of plenary inspiration and the great progress made at this time in liberal thought and in agnosticism.

It may be urged that at the present time a man, no matter what his belief is, cannot be excluded from testifying on account of that belief. But, admitting that to be the fact, what right has any class in this country, where we have no State religion, to impose a disagreeable form of this kind upon any one? How can the members of such a class justify themselves in compelling any man in open court to make such statements in reference to his religious views as may subject him to distrust and obloquy? Such to-day is frequently the result when a person refuses to be sworn according to the form most in use.

If, as Jeremy Bentham attempted to prove more than sixty years ago, oaths were useless, absurd and pernicious, how must they be regarded in America to-day, from whatever standpoint we may consider them? He proved quite satisfactorily that the custom of taking oaths, especially of an official nature, led to continual perjury, and that men swore to do things which they had neither the will, the intention, nor the ability to perform.

To an untrammelled thinker, whether an advanced skeptic or one strictly orthodox in faith, strong arguments must present themselves for abolishing all forms of oaths. If, as it would appear, the only benefits to be derived from them are an additional appeal or incentive to the person taking them to tell the truth or to perform his agreement, then there is certainly but little reason for retaining them. Upon the other hand, are there not numerous reasons for dispensing with them? Unless an oath is taken strictly in accordance with certain forms, it is pronounced null. Technicalities multiply about the mere form. Many proceedings are declared nugatory because such forms have not been precisely followed. Thus interests of great value are impaired through the carelessness or ignorance of a clerk or notary. While from past experience it appears that an oath is binding upon the consciences of but few, it is certain that it has precluded many conscientious men from testifying as to important matters, and from holding offices the duties of which they were well qualified to perform.

In this land of freedom no particular religious faith is recognized. Why should ancient forms of religion and of superstition

be insisted upon? While liberal laws have been enacted which permit a person to be affirmed or to swear in the presence of the Ever-living God without making use of the Gospels if he so desires, what benefits can accrue from maintaining a practice which shocks the sensibilities of one class of the community and excites the derision of another? Why would it not be sufficient if the laws provided ample penalties against all who should give false evidence upon the witness-stand, and that the clerk of the court should distinctly state to each witness at the commencement of his examination what those penalties were? Why not adopt a rule which in this enlightened age will permit all citizens of this great country—whether their beliefs accord with that of Washington or of Penn, of Jefferson or of Parker—to give their testimony in court, or to enter upon the duties of office, on the same equality and under precisely similar forms, without enacting what may seem to be a sacrilege to one and a mummary to another?

EDWARD A. THOMAS.